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INDIANA UNIVERSITY
Maurer School of Law
Bloomington

THE APPEAL

Issue No. 20

INDIANA UNIVERSITY SCHOOL OF LAW

November, 1971

Editorial

William Burnett Harvey has resigned as Dean of the Indiana School of Law. It is a sincere disappointment to this editor, but not a shock. We have lost a good dean, one who more than anyone else has improved the quality of this school. However, there were too many indicators pointing toward his resignation when he left for Kenya this August. In fact, the leave of absence itself offered substance to speculation.

Now the students find themselves embroiled in mass speculation as to why the good Dean has departed. Rumor has it that he quit because the legislature and bar opposed him, the university ignored him, the Chancellor fired him. Associate Dean Boshkoff has added fuel to the fire by preserving the confidentiality of Mr. Harvey's letter, and everyone worries over the effect it will have on our faculty and the law school in the coming years.

The rumors have merit and are almost believable, but not quite. Dean Harvey is not a personal friend nor am I a student of his character, but I had several opportunities to observe him last year. If he was coerced into resigning, writing a letter from Africa just was not the way William Burnett Harvey would do it. If he had a fault, it was starting controversies and fights, not running away from them. No, he would have waited til he had the greatest opportunity to capitalize on his move, then he would have resigned. He would have used his resignation as a tool against his "adversaries," not as a humble acquiescence to their wishes.

I'm not saying his difficulties with the bar and University did not have something to do with it. However, they could very well have been secondary. It seems more probable that the Dean has considered his job at I.U. finished, and that he saw new roads to travel. Mr. Harvey is a builder, not an administrator, and the law school appeared just about built. It has had a quick ascent from

mediocrity to respect in four short years, but the rise to greatness is a slower, more deliberate process, and he may not have felt the time was worth it.

As Associate Dean Boshkoff has said, the law school has momentum, and it is crucial at this point to retain it in selecting a new dean. The student speculation and concern over the law school's future is well founded, because we have not received the support from the legislature and University that we need to increase our capabilities. It really should have been expressed one or two years ago, though, and not just because the Dean has resigned. The law school is in need of some attention from the people with money, and the resignation may prove to be the immediate but not controlling cause of a long overdue recognition by the legislature.

Meanwhile, the faculty's active role in the new dean's recruitment lessens the concern about trustee control over the selection process. It will not be an easy task to find a man who can continue where Mr. Harvey left off, but it is the big concern right now, and the law school is in much better hands with its faculty having the ultimate decision.

I may prove wrong and it will not be the first time. But the resignation, if it was coerced, just did not fit Dean Harvey's character. I think there was a more personal motive involved, and I wish Dean Harvey the best of luck in his future.

John Lobus

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NEWS

Law Journal News

The Law Journal wishes to announce that the following people have been elected to the Board of Editors for the second semester.

Andrew Sonneborn
David Sidor
James McHie
Edward McCrea
Michael Huston

Articles Editor
Symposium Editor
Symposium Editor
Note Editor
Note Editor

This year at the Law Journal Banquet an award will be given to the faculty member who in the opinion of the Board of Editors did the most to further the aims of the Journal. Several professors will be considered in that faculty-Journal relations have been better than at any time in the recent past. A special note of thanks, however, is due to Professor Robert Birmingham, who has served as the Journal adviser during the last couple of years and who will be leaving on sabbatical next semester. Professor Patrick Baude will take Professor Birmingham's place as adviser.

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Law School Edges Medics, 26-25

All was not a loss on the football field at this year's Indiana homecoming. Despite the University's loss to Northwestern, the law students witnessed a victory of their own over the med school, 26-25 in overtime.

It had to be one of the most thrilling football games ever played between these old-time rivals, and there were many heroes on both sides. (Actually the biggest hero to the law school fans was Mike Huston, who did not play but whose SBA brought the keg).

The med school jumped to an early lead the first time it had the ball, scoring on a 50 yard touchdown pass. They made the conversion to lead, 7-0. It took the law school a while to get rolling, but finally Steve Dunker hit Paul Mason with a flat pass to put us on the scoreboard late in the second quarter. The PAT was unsuccessful, though, and the half ended, 7-6, medics.

The second half proved wild. The med school scored again to make it 13-6, but Dunker connected on a long pass to Bill Roessler to tighten the score at 13-12. On the extra point attempt Dunker could not find anyone open, so he lumbered for the goal line, barely crossing it before a medic's tag. The game was tied, 13-all.

So it stood until one minute left to play in the game when the medics once again connected on a TD pass from midfield. But they missed their extra point attempt for a score of 19-13. The lawyers met the occasion, however, and scored in two plays, the second one a TD pass from Dunker to Bob Budeska. Our extra point also proved unsuccessful and the regulation time ended with a tie score, 19-19.

After the refs tried to end the game there, and were convinced that it was better for their health to work out some sort of decision as to a winner, a five minute overtime was called, and the lawyers received the kickoff. Wasting little time, Dunker passed to Roessler for a touchdown, hit Mason for the extra point, and the Law School seemed destined for a 26-19 victory. However, the medics got possession of the ball for one desperate minute in an attempt to knot the game. With the clock running out, the medics scored on a 40 yard pass play into the end zone, and the stage was set for their extra point attempt. The passer was rushed heavily and he desperately threw the ball into a crowd of players at the goal line, the ball was knocked down, and the law school won, 26-25, avenging last year's upset.

In very close balloting, this year's winner of the Most Valuable Player Award (bringing with it a free, 1971 issue of The Appeal) is Steve Dunker, the quarterback who threw four TD passes and ran for an important extra point.

We also cite Harry Gonso (intercepting three medic passes and blocking a couple others) and Bill Roessler (2 touchdown catches along with several other receptions). Special thanks goes to Dean White, whose enthusiasm grants him the title of cheerleader of the year (Once in the fourth quarter, we were penalized from the medics five yard line to their twenty; his response, "Good, that gives us some room to operate," and we scored on the next play).

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National Moot Court Tournament

The District X regional moot court competition was held in Chicago November 4-6, with 20 teams representing 12 law schools in Wisconsin, Illinois, and Indiana.

Each team in the tourney argued twice, once each for petitioner and respondent. The tourney heads then selected the top four teams based on a point basis (1/3 for each argument, 1/3 for a written brief less than 42 pages long). These four would argue each other to determine the top two, who would represent the district in the national tournament in New York in December.

The case was a hypothetical appeal to the Supreme Court to reverse a district court's denial for a writ of habeas corpus. The facts of the case are very similar to Lt. Calley's court martial last year. The Petitioner cited several alleged Constitutional violations in his trial, and he asked a federal district court to grant a writ of habeas corpus. It refused and the appeals began. The questions centered around federal courts' jurisdiction over courts martial, possibly prejudicial pre-trial publicity, right to a jury trial of peers, and evidentiary issues.

IU sent two teams to the tourney, Bill Fugelso and Ellen Thomas on one, and Steve Kinnard and John Lobus on the other. Fugelso and Thomas faced two very difficult teams (and courts) and lost both their matches by close margins. Kinnard and Lobus won both of theirs, but did not accumulate enough points to make the top four. They tied for fifth with two other teams, only one point behind the fourth place semi-finalists.

Although the teams sought the final two, it was a good representation of the Law School, and the experience in brief writing and appellate argument was most valuable.

COMMENTARY

MOOT vs. REALITY

Within the past few years, unrest and concern by law students has taken various avenues of expression; the most recent being student concern about the educational benefits of the Tutorial and Moot Court Program. It seems that one constant complaint pervades much of past and current student frustration--relevance. Many students have commented that learning to use the library facilities (the one touch with relevancy) is the most valuable part of the current Tutorial course. It is this working knowledge, this relationship to the "real" world that many students feel denied.

Approximately five blocks from this law school, courts are in action, and especially trial courts where the student can observe evidence in action, property in action, pleading in action, torts in action. Are students urged to attend the courts frequently? Do the students make any effort to watch, describe and interpret courts in action? Do any professors accompany the students and comment on what has been observed? Granted the fact that the Bloomington court system may not serve as a model of judicial excellence; but is it not at least anomolous that with litigation laboratories just around the corner, law students confine what they can learn about litigation to books?

The course in Trial Techniques may be a major step to fill this void in a legal education, but unfortunately this course is limited in enrollment and often not available to the student until the end of his law school career. The result is that the law student spends the majority of his school years with no visual conception of what is actually happening in the courts (with the exception of The Bold Ones, Perry Mason, Judd for the Defense, the D.A., Owen Marshall, Men at Law, etc.) The abstract concepts and vague terminology that smothers the neophyte may take on an added meaning if he is able to visualize the situation. If a student can see actual pleading procedures involving real complaints, answers, pre-trial motions, docket sheets, etc; then he may develop a working knowledge rather than a numarization of terms. If a student can read and critically analyze real appellate briefs and memorandums then he may learn legal writing techniques during the process.

Without a great deal of difficulty, the previous examples could be incorporated into a two or three hour course for freshmen. Such a course could be implemented by lectures from outside practitioners who have distinguished themselves in various fields of litigation and appellate practice. This also might improve the relationship with the Indiana Bar Association, for many attorneys would gladly accept such an invitation. The litigation process seems to offer an infinite number of areas that could be objectively considered and the above mentioned are but a few.

This type of course might give the law student a little more self confidence with his present studies as well as with future employment. It will give him a chance to face the "real" world with a little "real" experience since unfortunately not everyone can work as a law clerk during the summer months. The student is limited to what he can learn "on his own." A course sanctioned by the school itself would entail class discussion, comment and critical analysis by competent instructors, access to materials and information normally not available to the individual student.

Such a course might help relieve some of the frustration, disillusionment, and unrest, and unrest that at one time or another has disturbed many students. I put this forth as a plausible alternative to the present Tutorial and Moot Court Program, not as a concrete solution to the present problem.

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BAUDE ON THE NIXON COURT

During a speech before the Bloomington Civil Liberties Union on November 9, Professor Patrick Baude of the I.U. Law School discussed President Nixon's current nominees to the United States Supreme Court and explored the recent opinions of the President's appointments to the Court, Chief Justice Burger and Justice Blackmun. Overall, as a result of Nixon's influence upon the Court, Baude foresaw a decline in the "judicial activism" which marked the era of the Warren Court. In reference to the Warren Court, however, he noted that "reliance upon the Supreme Court for the answers to certain problems is dangerous to the body politic."

In his opening remarks, Baude questioned the diminishing role of the Senate in the selection of Justices. He stated that although "members of the Senate are quite influential in determining who is appointed to District Court benches", the Senate seems to have carried over an attitude of acquiescence toward executive appointment (which is correctly applied in that area) to Supreme Court nominations. Since "the Senate as a body is no expert in matters of ethics or competence," he suggested that "the Senate should test the judicial temperament" of a nominee.

On the topic of current nominees, Baude characterized the writings and public statements of Lewis Powell, Jr. as "ambiguous." "You simply do not know which side he is on, but I suppose that is what you mean by judicial temperament," said Baude. As to William Rehnquist, he cited an article written by Rehnquist concerning his clerkship with Justice Jackson. In this article, Rehnquist asserted that the underlying reason for many of the liberal decisions by the Court was that the Justices were being "taken in" by their liberal law clerks who had been educated at liberal law schools. Another of Rehnquist's statements noted by Baude was his definition of "extreme liberalism." Among other elements Rehnquist mentioned "solicitude for Communists and other criminals."

The opinions of Burger and Blackmun during the last term of the Court were considered next by Baude. On the subject of law and order, he concluded that both Justices tended to be pro-police. Burger sometimes seemed to show "eminent

good sense" on the issue of the exclusionary rule while Blackmun was sharply criticized for a "tendency to include a great deal of extraneous material in his opinions." One note of optimism expressed by Baude was his belief that the Nixon Court may not retreat from the decriminalizing of victimless crimes. Baude saw this as "the most fundamental area of criminal procedure."

As to other issues before the Court such as equal protection claims and free speech and the First Amendment, Baude emphasized that "on the substance of civil liberties, except for criminal procedure, Burger and Blackmun were in substantial agreement with other members of the Court." He cautioned, however, that "as to the manner in which the Court should deal with these issues, there is a fundamental disagreement between Burger and Blackmun and the other Justices." Baude felt that this reluctance to exercise active judicial discretion will be shared by both Powell and Rehnquist.

On the specific question of the constitutionality of the death penalty, Baude had no prediction as to what the Court would decide. He did predict that the power of the states to outlaw abortions would be upheld, but that most state abortion statutes were still susceptible to attack upon grounds of vagueness or economic discrimination.

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H U M O R

A few weeks ago, an assignment was passed out in one of the Tutorial classes. For those lucky few of you who might have avoided reading the Library Bulletin Boards over the last month, the assignment was a Guest Statute case. It involved two characters: Mark and Estelle. Mark, a married man, wined and dined Estelle, described as having an ample figure, and later accomplished an off stage seduction which could have been taken as a sort of payment for the evening. Back on stage, Mark then develops a guilt complex, and during the ride home proceeds to get slightly blasted and begins to drive erratically. At this point, Estelle, who is described as "the bitch" begins to complain, so Mark offers to let her out of the car, miles away from anything in the dark of night. Estelle declines. Mark wrecks the car, and Estelle sues for injuries sustained, claiming that she was no longer a guest in the car.

An immediate complaint was made by the Women's Caucus, claiming that the caricature of Estelle was chauvinistic in nature. After receiving no apparent response to their complaints, the Caucus took their gripe to what appears to be the school's equivalent of the Wailing Wall: The Library Bulletin Board. The response there must have been considered equally chauvinistic, as the letters posted thereon have subsequently disappeared.

Although THE APPEAL does not wish to become embroiled in the struggle for supremacy between the sexes (The unmarried editors of this tabloid find it difficult enough to get dates...) we would like to offer for contemplation a similar but alternative fact situation involving the same characters which might involve a more liberated view of the female of the species...

The sun chased Estelle along the scenic thirty-six mile drive to Mark's home, a drive which Estelle enjoyed, the roar of her engine belying the superb tuning job she had done on her restored MG roadster. It was 11:00 a.m. when Estelle pulled into his drive to find him waiting for her. It had taken four years of college football to mold Mark's body, although fortunately for Estelle, the molding process has accomplished a distinctly opposite result on Mark's mind. Estelle detested the weak emotionality of intellectuals.

Mark shyly bounced into the car, gently placing his hand on Estelle's thigh. Estelle gently broke three fingers on Mark's left hand.

The sun by now was hot and blinding as Estelle tooled the MG (preferred by the editors of Cosmopolitan over the Jaguar) back the way she had come. But the lake was soon in view. Estelle smoothly double clutched the car to a halt, evoking a sigh of admiration from Mark.

Swimming, basking in the sun, Mark's amply displayed figure brought Estelle's mind back to quiet nights spent in the Detroit Lion's dressing room after the game. Estelle herself had turned down an offer to play right cornerback to continue with her job coaching the U.S. Olympic Karate Team.

After an exotic evening meal and a delightfully different film describing a man's unrequited love for a Venus Flytrap, Estelle affectionately threw a full Nelson on Mark and suggested that it was time he repaid her for the evening's entertainment. Tears sparkled in Mark's eyes as he protested that he wasn't that sort of a boy, but as Estelle gently broke the other two fingers on his left hand, he whimpered his consent.

Estelle was tired and bleary eyed afterwards as the two stumbled back towards the MG. For this, she thought, she had passed up the chance to defend her national arm wrestling championship. Mark was softly crying as Estelle cupped his hand in hers, breaking his right thumb.

As they drove along, Estelle began to drink from a bottle of rubbing alcohol she kept in the glove compartment. She offered Mark a sip, and he became immediately intoxicated, mumbling something about being sick to his tummy.

Estelle pulled the MG to the side of the road and dragged Mark's wretching figure out of the car, breaking two more fingers on his right hand. She threatened to leave him there if he didn't sober up immediately. Mark fell to his knees, begging her not to desert him as he was scared of the dark. With a swift kick to the groin she carefully immobilized him and returned him to the car. She was becoming too sentimental, she thought to herself, and immediately promised herself to show no mercy to her next tag team wrestling opponent.

A few miles down the road, the MG stalled on some railroad tracks. Estelle cursed for ever trusting her car to the mechanics at the local gas station. She pulled Mark from the car, breaking the last two fingers on his right hand, as the whistle of a train sounded in the distance. Estelle then dragged Mark to safety, but as the train neared, Mark crawled back to the car to get Estelle's high school ring. The train and Mark reached the MG at the same time. Mark was killed, living long enough to renounce his chauvinist ways in a last dying gasp. The MG is resting well in Memorial Hospital.

Assuming the following statute is applicable in the jurisdiction:

--In all cases concerning both a man and a sister, the man will lose.
Off the Pigs. Sisters unite. Men are icky.--

answer the following questions:

- (1) If Mark had lived, would he have ever played the piano again?
- (2) Can Estelle collect from Mark's estate the price of admission for the film they attended?
- (3) If a hit song is made out of the above facts, can the writer of "Teen Angel" sue for plagiarism?

- (4) If a passing Policewoman had seen Mark touch Estelle's thigh would she:
(A) Have arrested Estelle for indecent exposure?
(B) Have grabbed Estelle's other thigh?
(C) Have called Helen Gurley Brown for instructions?
(D) All of the above
- (5) Will the writer of this live out the semester if his identity is disclosed?
- (6) Prepare a memorandum of law dealing with the likelihood that evidence of a recent Ralph Nader study on the automotive repair industry would be admissible evidence in a suit brought by the MG against the railroad.

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TO: THE APPEAL
FROM: JOEL MOWREY
SUBJECT: THE UNFORTUNATE MAN

"The Unfortunate Man," sung by Jimmy Driftwood, The Newport Folk Festival, 1960,
Record one, Side Two, Vanguard VRS 9083/4.

There once was a lawyer they call Mister Clay
He had but few clients and they wouldn't pay.
At last of starvation he grew so afraid
That he courted and married a wealthy old maid.

refrain: He's a very unfortunate, a very unfortunate, a very unfortunate man.
He's a very unfortunate, a very unfortunate, a very unfortunate man.
She went to the washpan to bath her fair face.
Thus she destroyed all her beauty and grace.
The rose in her cheek quickly grew very faint
And he saw on the towel was nothing but paint.

refrain
She went to the mirror to take down her hair
When she had done so her scalp was all bare
Said she, "don't be frightened to see my bald head
I'll put on my cap when I get into bed."

refrain
She hung her false hair on the wall on a peg
Then she proceeded to take off a leg.
Her trembling husband thought sure he would die
When she asked him to come and take out her glass eye.

refrain
The husband was biting his quivering lips
While she was removing her counterfeit hips.
Just then her false nose clattered down on the floor
And the poor lawyer screamed and ran out at the door.

refrain
Now all you young men who would marry for life
Be sure to examine your intended wife.
Remember the lawyer who trusted his eyes
and a little bit later got quite a surprise.

refrain

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The horror of it all hit harder Halloween night. Halloween is a special night for law students and nothing exterior could frighten me on this dark blustery eve. Students of law become accustomed to coldness, to ghosts of the past interrupting the present, to monsters of fiction and distortion lurking around the corner in any legal argument. Wandering in the dark? That's first year stuff. Teeth marks on the neck? Mention it to 2nd year students and they immediately think of the torts exam and how they can't fear anything else again.

No, I wasn't afraid, but one could be worried. I was concerned about the wandering, fragile spirits of Cardozo, Hand, Holmes et al, might reek or what damage they might suffer this night, but I fretted more about the friends that were visiting me. I was boring them to death. I was sure they were all wishing that when they had died, they had stayed dead. I kept going on and on about class discussions and my responses in law classes. Agitated, I sputtered and cried aloud, but my friends in my darkened living room didn't seem to care.

My guest list? An unusual one--a rare group united: Dracula, Frankenstein, Wolfman, the Mummy, the ghost from Hamlet, Morticia Addams, Mr. Oliver.

My problem? I talked too much in class. This hindered my own education and that of all those in class with me.

With the decline of the classical Socratic method in law classes, student participation was inconsistent and uncertain. At their worst, class discussions sunk to undergrad levels, e.g., "Well, class, what's Mrs. MacBeth really getting at in this last scene?"

Sometimes a prof would only ask a question to catch a breath. These questions often were too simple for anyone else in the class to bother with, e.g., "How many times can we squeeze five bushels into twenty-five?" I always answered and sometimes made a discussion of it, taking up classtime. I asked my partymates what I should do about this terrible propensity, but nobody answered. Morticia Addams continued to cut roses off branches.

I was helping to stir the broth for the party in a huge black pot, large enough for a person to stand in, but my mind just wasn't on what I was doing. The Wolfman grabbed my spoon and took my job.

At some times in class I thought some of my past experiences might be relevant and valuable discussion material, e.g. in Family Law--hadn't my parents been married--didn't I have background information? In Contracts, I thought the fact that I had seen a Wallace Beery movie seemed relevant.

Dracula walked over and told me that I was sucking the life out of the party by discussing this subject. He stepped on a black cat which then scrambled across the dark room and jumped into Frankenstein's lap. I continued with my thoughts, talking aloud.

"If I feel like going off on a tangent in class, why shouldn't I be able to? Nobody likes to listen to the professor all the time do they? Sometimes I'm even funny with my cute comments. At this a couple guests reacted--with laughter. Mr. Oliver continued to cut out a piece of red flannel.

Though I was the only one interested in what I was saying (as is often the case in class) I went on, "Who else is going to talk in the classroom situation if I don't?" Frankenstein said, "Master, perhaps the professor?" I ignored the big 1st year student. Mr. Oliver did not comment, as he finished his cutting task. He held up a big red "D" which was meant for the chest of my sweater at the end of his course. I had seen others with similar sweaters at school. The Mummy tried to speak, but finally scratched out a note on my leg with a screwdriver: "Mr. Oliver hard like pyramid, but class moves right along."

I wiped the blood and kept blabbing. I knew I shouldn't take up so much class time talking, talking, talking, no matter how much I defended it or liked it. "What can I do?" "What can I do?" "What can I do?" I cried repeatedly, helpless at my own weakness. I bored the party like I did a class.

Finally, I was interrupted by some movement across the dark room. It was the ghost slowly slipping along. All during my diatribe he had stood quietly in the shadows behind the curtain--or maybe I had mistaken him for the curtain. He moved over to the pedestal with the skeletal bust on it. He picked it up and the bony jaw dropped but he grabbed it. He contemplated the bust, staring, for what seemed like minutes. Finally he put it down and looked over at me and spoke:

"Shut up."

He glided out the door and the others followed. The party was over.

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Dr. Drain's Worry Clinic

by Dr. George Drain, A.B., M.A., Ph.D,
Notary Public

"Dear Dr. Drain," writes a young man from Indiana, "I am a second year law student and I am beginning to worry about finding employment when I graduate. I am in the fiftieth percentile of my class. I thought that perhaps you would examine my resume and advise me on how to succeed in finding a job."

My advice to this young man is the same as that I would give to any young man who aspires to become a success in this world. Learn to sell yourself to potential employers. Practice salesmanship. You must realize that you are just a small commodity for sale in the glorious free enterprise system which has made this country great.

Of course your attempt to sell yourself will be influenced by the law of supply and demand. Considering your rank in class and the prevailing overcrowdedness in the field of law, you would be lucky to get a job drawing the lines on legal pads. However, if you do a good job of packaging and selling your talents, you could work for any collection agency in southern Indiana.

Never are the principles of good salesmanship more important than in the interview with your potential employer. You must display a sound product that will function in the dollars and cents world of law. Tell him about the funny song you made up about your wierdo intellectual professor. Show him the charred "Chatty Cathy" doll you used for effect in your procedure negotiation

problem. Cleverly work Latin legal phrases into the conversation. And most of all be sure to flatter the interviewer, and let him know that you are the type of employee who can get along with superiors. Remember: A kiss on the BOTTOM leads to the TOP.

The resume is a form of advertising. The purpose of advertising is to call attraction to the product. Although the mentioning in your resume of your three arrests and convictions on morals charges does call attention to you and your first hand knowledge of criminal law, I doubt that this is in the real Madison Avenue tradition. I think you would do better to stress some of your more positive accomplishments such as your perfect attendance record in Moot Court. Good advertising will help make the big sale.

[For advice on how to sell yourself in another area of the law, send for Dr. Drain's pamphlet "THIS LITTLE PIGGY WENT TO MARKET."]